

## REMARKS/ARGUMENTS

### 1. Summary of the Office Action

Claims 29 was rejected under § 101 because the claimed invention is directed to non-statutory subject matter. “A machine-readable medium having stored thereon data representing instructions” is non-statutory. Data representing instructions is non-statutory descriptive material and should be distinguished from “instructions” or “computer code.”

Claims 26-37 were rejected under § 103(a) as allegedly being unpatentable by U.S. patent no. 5,960,214 (hereinafter “Sharpe, Jr.”) in view of U.S. patent no. 6,314,406 B1 (hereinafter “O’Hagan”).

### 2. Response to § 101 Rejection

Claim 29 has been amended to address the Examiner’s concerns.

### 3. Response to § 103 Rejections

Applicant(s) respectfully traverse this rejection for the reasons set out below, and ask the Examiner for reconsideration.

To establish a **prima facie** case of **obviousness**, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure.

In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

**THE PRIOR ART REFERENCES DO NOT TEACH OR SUGGEST ALL CLAIM  
LIMITATIONS, WHEN CONSIDERED SINGULARLY OR IN COMBINATION.**

The applicant maintains that Sharpe does not teach numerous limitations of claim 26.

Sharpe describes a Field Device Management System. Sharpe describes “smart devices” that are capable of transmitting a signal indicative of a value associated with the device (i.e. a measurement), and other information such as troubleshooting information about the device. *See Col. 1 Lines 36-58.* Furthermore, Sharpe describes these smart devices being connected to a distributed control system (DCS) that can access a remote database. *See Figure 1, and Col. 5 Line 65 – Col. 6 Line 57.* As described in Sharpe, the remote database functions as a repository of information sent from the smart devices, so that to operators at the FMS system, off-line smart devices appear as on-line. *See Col. 6 Lines 38-41.*

In contrast, claim 26 requires that a central computer monitoring the smart device request information from the remote database. This database is not for storing data collected by the smart devices to be used remotely, this database is “maintained and periodically updated by a seller of the smart appliance” to enable the central computer to control the smart appliance. Thus, Sharpe does not teach “sending a request for information from a central computer to a remote database, the central computer monitoring and operating a smart appliance sharing a physical environment with the central computer, the remote database being maintained and periodically updated by a seller of the smart appliance;

receiving the requested information from the remote database at the central computer, the information being related to the smart appliance; and

transmitting a control signal from the central computer to the smart appliance, the control signal being generated by the central computer based on the information received from the remote

database, wherein the control signal functionally operates the smart appliance.” (*emphasis added*)

The Examiner, in finding the Applicant’s argument unpersuasive on page 7 of the Office Action, notes that “the remote database (FMS database 40) does not merely store information gathered by the smart device, but also stores other data such as smart device configuration and maintenance information.” The Examiner is correct in this assertion. However, this does not contradict the above argument. The FMS database is still not updated by the seller of the smart appliance, and the database is still not remote from the central computer.

The Examiner refers to O’Hagan “to show teachings where a remote database is maintained and periodically updated by the seller.” O’Hagan discusses portable devices that upon scanning a barcode in a store can display the website of the manufacturer of the product for additional information. The manufacturer of the product is not the manufacturer of the portable device, which appears to be a Web navigation tool. Furthermore, a website is not a remote database. In addition, the portable device is not a central computer, and an item for sale is not a smart device. And finally, the portable device cannot send a control signal to operate the items scanned. Thus, the O’Hagan reference thus does not teach the limitation purported by the Examiner. Nor is the O’Hagan reference in any way related to central monitoring and control of smart devices.

In light of the arguments above, claim 26 should now be allowed. Independent claims 29, 32, and 35 include similar limitations and should also be allowed. All claims dependent on these allowable independent claims and adding further limitations should also now be allowed.

In light of the above, Applicant(s) respectfully submit(s) that the rejection under 35 U.S.C. § 103 has been overcome, and withdrawal of this rejection is therefore respectfully requested.

4. **Conclusion**

Having tendered the above remarks, Applicants respectfully submit that all rejections have been addressed and that the claims are now in a condition for allowance, which is earnestly solicited.

If there are any additional charges, please charge Deposit Account No. 02-2666. If a telephone interview would in any way expedite the prosecution of the present application, the Examiner is invited to contact Adam Furst at (408) 947-8200 ext. 212.

Respectfully submitted,  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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Adam Furst  
Reg. No. 51,710

12400 Wilshire Blvd.  
Seventh Floor  
Los Angeles, CA 90025-1026  
(408) 947-8200